## REMARKS/ARGUMENTS

Claims 7-25, as amended, and new claim 29 are pending upon Applicants' RCE filing for the Examiner's review and consideration. New claim 29 recites the features of claim 7, except that the process consists essentially of the enumerated steps. No new matter has been added.

Applicants appreciate the Examiner entering their Response filed June 14, 2006, as noted in the most recent Advisory Action. Applicants respectfully request, however, that the Examiner reconsider Applicants' remarks and arguments filed in their June 14 Response in assessing the allowability of the currently pending claims. Applicants respectfully submit that the Examiner improperly relied on overruled case law and on bases for asserting and for maintaining obviousness rejections that were improperly supported in the record.

In particular, Applicants respectfully reiterate their objections to the improper use of *In re Bozek*, 416 F.2d 1385, 1390, 163 USPQ 545, 549 (CCPA 1969), as its holding regarding the application of common knowledge without suggestion in a particular reference has been overruled, or at least severely restricted, by more recent Federal Circuit precedent. *See, e.g., In re Lee*, 277 F.3d 1338, 1343-46 (Fed. Cir. 2002).[1] Applicants respectfully request that, should the Examiner continue to rely on *In re Bozek* in maintaining rejection(s) of the claimed invention based on obviousness, an explanation of its applicability, despite more recent contrary case law, should be offered on the record for Applicants to rebut.

Moreover, Applicants respectfully request that, should the Examiner continue to maintain the obviousness of the claimed invention, the Examiner clearly and specifically indicate for the record the particular bases on which the Examiner relies for motivation to combine and/or modify the references. While Applicants acknowledge that the teaching or suggestion may be impliedly reasoned from knowledge generally available to one of ordinary skill in the art (*In re Jones*, 958 F.2d. 347, 21 USPQ2d 1941 (Fed. Cir. 1992)), Examiner's mere generic statements that one of ordinary skill in the art would be motivated to modify/combine references, without

[1] The decision in *In re Lee* specifically recites: "Bozek did not hold that objective analysis, proper authority, and reasoned findings can be omitted from [USPTO] decisions. Nor does Bozek, after thirty-two years of isolation, outweigh the dozens of rulings of the Federal Circuit and the Court of Customs and Patent Appeals that determination of patentability must be based on evidence. This court has remarked, in *Smiths Industries Medical Systems, Inc. v. Vital Signs, Inc.*, 183 F.3d 1347, 1356, 51 USPQ2d 1415, 1421 (Fed. Cir. 1999), that Bozek's reference to common knowledge 'does not in and of itself make it so' absent evidence of such knowledge." (emphasis added)

any evidence being placed on the record, is improper. M.P.E.P. § 2143.01 (citing *Al-Site Corp. v. VSI Int'l Inc.*, 174 F.3d 1308 (Fed. Cir. 1999)); *see also In re Kahn*, 04-1616 (Fed. Cir. March 22, 2006); *see also In re Lee*, 277 F.3d at 1343-46; *accord In Re Dembiczak*, 50 USPQ2d 1614 (Fed. Cir. 1999).

Applicants thus respectfully request that the Examiner either (a) specifically cite to one or more of the reference themselves or (b) take official notice regarding the motivation to combine, so that such motivation is clearly and unambiguously on the record for Applicants to rebut.

**CONCLUSION**

Applicants respectfully submit that the pending claims are now in condition for allowance. Applicant invites the Examiner to telephone the undersigned attorney if there are any issues outstanding which have not been addressed to the Examiner's satisfaction.

Respectfully submitted,

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Date

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